

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LIGHTHOUSE RESOURCES INC., et al.,

Plaintiffs,

and

BNSF RAILWAY COMPANY

Intervenor-Plaintiff,

v.

JAY INSLEE, et al.,

Defendants,

and

WASHINGTON ENVIRONMENTAL
COUNCIL, et al.,

Intervenor-Defendants.

CASE NO. 3:18-cv-05005-RJB

ORDER CONTINUING
DEFENDANTS' AND
INTERVENOR-DEFENDANTS'
MOTIONS FOR PARTIAL
SUMMARY JUDGMENT AND
GRANTING RULE 56 (D)
MOTIONS

THIS MATTER comes before the Court on motions for summary judgment regarding preemption issues filed by Defendants and Intervenor Defendants (Dkts. 129 and 128) and Fed. R. Civ. P. 56 (d) motions filed by Plaintiffs and Intervenor Plaintiff (Dkts. 144 and 146). The

1 Court has considered the motions, briefs filed in support of and opposition thereto, including
2 briefs of amici curiae, and the remainder of the file herein.

3 This case challenges the State's denial of a Clean Water Act Section 401 Certification
4 ("water quality certificate") and a request for approval of a sublease of state-owned aquatic lands
5 for Lighthouse's proposed coal export terminal on the Columbia River. Dkt. 1. There are many
6 issues. As is relevant to the pending motions, Lighthouse and Intervenor-Plaintiff BNSF, who
7 will provide rail service to the proposed terminal, maintain that the State's denials are preempted
8 by the Interstate Commerce Commission Termination Act ("ICCTA") and Lighthouse further
9 argues that the State's decisions are also preempted by the Ports and Waterways Safety Act
10 ("PWSA"). Dkts. 1 and 22-1.

11 The State and WEC move for summary judgment dismissal of each of the preemption
12 claims. Dkts. 128 and 129. Lighthouse and BNSF oppose the motions and, in the alternative,
13 move the Court, under Fed. R. Civ. P. 56 (d), for an order denying the motion without prejudice
14 or deferring ruling on the motion until discovery is complete. Dkts. 144 and 146. The discovery
15 deadline is January 14, 2019, the dispositive motions deadline is February 12, 2019, and trial is
16 set to begin on May 13, 2019. Dkt. 84.

17 DISCUSSION

18 Under Fed. R. Civ. P. 56 (d):

19 If a nonmovant shows by affidavit or declaration that, for specified reasons, it
20 cannot present facts essential to justify its opposition [to a motion for summary
21 judgment], the court may: (1) defer considering the motion or deny it; (2) allow
time to obtain affidavits or declarations or to take discovery; or (3) issue any other
appropriate order.

22 Although Lighthouse and BNSF have made a scant showing that they "cannot present
23 facts essential to justify [their] opposition," Rule 56 (d), it is sufficient to justify allowance of
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more time to complete discovery on the preemption issues. Accordingly, Lighthouse and BNSF's motions under Rule 56 (d) (Dkts. 144 and 146) should be granted, in part, and the State and WEC's motions for partial summary judgment (Dkts. 129 and 128) should be continued until December 3, 2018.

If there is new material to add (and only if there is new material), the additional briefing schedule should be set as follows: Defendants and Intervenor Defendants may each supplement their motions, if they wish, on or before November 19, 2018; Plaintiffs and Intervenor Plaintiff may each supplement their responses, if they wish, on or before November 26, 2018; and Defendants and Intervenor Defendants may each supplement their replies, if they wish, on or before November 30, 2018. Parties are strongly encouraged to be concise. The court will consider the motions on December 3, 2018.

No additional amicus briefs will be considered on the issues raised in these motions (Dkts. 129 and 128).

ORDER

Therefore, it is hereby **ORDERED** that:

- Plaintiffs and Intervenor Plaintiff's Fed. R. Civ. P. 56 (d) motions (Dkts. 144 and 146) **ARE GRANTED**,
- Defendants and Intervenor Defendants motions for summary judgment (Dkts. 129-128) **ARE CONTINUED to December 3, 2018**;
- **If there is new material to add (and only if there is new material)**, the additional briefing schedule is set as follows: Defendants and Intervenor Defendants may each supplement their motions, if they wish, on or before **November 19, 2018**; Plaintiffs and Intervenor Plaintiff may each supplement

1 their responses, if they wish, on or before **November 26, 2018**; and Defendants
2 and Intervenor Defendants may each supplement their replies, if they wish, on or
3 before **November 30, 2018**. The motions for summary judgment will be
4 considered on December 3, 2018.

- 5 • No additional amicus briefs will be considered on the issues raised in these
6 motions (Dkts. 129 and 128).

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
8 to any party appearing *pro se* at said party's last known address.

9 Dated this 26th day of September, 2018.

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11 ROBERT J. BRYAN
12 United States District Judge
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